

000595 REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO		1. CERTIFICATE NUMBER (FOR AUDITOR'S USE ON.) <div style="text-align: center; font-size: 1.2em;">2800021</div>	
TO: CITY ATTORNEY		2. FROM (ORIGINATING DEPARTMENT): CITY ATTORNEY	
		3. DATE: 07/11/2007	
4. SUBJECT: Authorizing continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP & Wehner & Perlman for Legal Services in <i>SDPOA v. Aguirre, et al.</i> ; <i>Marcus Abbe, et al. v. City of San Diego</i> ; and <i>Aaron, et al. v. Aguirre</i> .			
5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.) Don McGrath x35860		6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.) Todd Bradley x36173	
		7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED <input type="checkbox"/>	
8. COMPLETE FOR ACCOUNTING PURPOSES			
FUND	81140		
DEPT.	81140		
ORGANIZATION	3501		
OBJECT ACCOUNT	4141		
JOB ORDER	081141		
C.I.P. NUMBER			
AMOUNT	\$3,215,000.00		
10. ROUTING AND APPROVALS			
ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>Ken Hummer</i>	7/12/07
2	RISK MGT.	<i>[Signature]</i>	7-12-07
3			
4	AUDITOR	<i>Pam Hallbert</i>	7-12-07
5			
6			
7			
		DOCKET COORD: _____ COUNCIL LIAISON: _____ <input checked="" type="checkbox"/> COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 7/30/07	
11. PREPARATION OF: <input checked="" type="checkbox"/> RESOLUTIONS <input type="checkbox"/> ORDINANCE(S) <input type="checkbox"/> AGREEMENT(S) <input type="checkbox"/> DEED(S)			
1. Authorizing \$3,215,000 for continued retention, payment for invoices and future reserve funding for legal services by outside counsel Latham & Watkins, LLP & Wehner & Perlman to represent the City of San Diego in <i>SDPOA v. Aguirre, et al.</i> ; <i>Marcus Abbe, et al. v. City of San Diego</i> ; and <i>Aaron, et al. v. Aguirre</i>			
2. Authorizing the City Auditor and Comptroller to expend \$3,215,000 from the Public Liability Fund to pay the above expenditures.			
11A. STAFF RECOMMENDATIONS: Adopt the resolution and authorize the Auditor to appropriate and issue an Auditor's Certificate to fund this obligation.			
12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)			
COUNCIL DISTRICT(S): All			
COMMUNITY AREA(S): Not applicable			
ENVIRONMENTAL IMPACT: This action is not a "project" for purposes of CEQA			
HOUSING IMPACT: Not applicable			
OTHER ISSUES: Clerk requested to provide Executive Assistant City Attorney Don McGrath (11 th floor, CCP, 533-5860) with a certified copy of the resolution.			

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: July 11, 2007 REPORT NO:
 ATTENTION: Mayor and City Council members
 ORIGINATING DEPARTMENT: City Attorney
 SUBJECT: Authorizing continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP and Wehner & Perlman for Legal Services in *SDPOA v. Aguirre, et al.*; *Marcus Abbe, et al. v. City of San Diego*; and *Aaron, et al. v. Aguirre* [SDPOA #1, SDPOA #2 and SDPOA #3]
 COUNCIL DISTRICT(S): Not applicable
 CONTACT/PHONE NUMBER: Don McGrath, 533-5860 or Todd Bradley, 533-3173

REQUESTED ACTION: Approve continued retention, payment for invoices and future reserve funding for Latham & Watkins, LLP and Wehner & Perlman for Legal Services in matters designated as SDPOA #1, SDPOA #2 and SDPOA #3

STAFF RECOMMENDATION: Adopt the resolution and authorize the Auditor to appropriate and issue an Auditor's Certificate to fund this obligation.

EXECUTIVE SUMMARY: SDPOA #1, SDPOA #2 and SDPOA #3 have been combined for billing purposes at this time.

1. *San Diego Police Officers Association v. Michael Aguirre, et al.* [SDPOA #1], United States District Court Case No. 05 CV 1581

On August 23, 2005, the San Diego Police Officers Association filed and served a complaint in this case. The case raised issues related to labor negotiations and retirement issues between the City and the POA. SDPOA #1 has now been dismissed by the United States District Court. However, we are informed the POA intends to appeal the decision to the Ninth Circuit, which will require a reserve amount for additional, anticipated legal fees.

In closed session on July 10, 2007, the Council was informed of the status of the case and the legal fees pending. The Council was informed of the need for additional funding and that funding could come from the Public Liability Fund.

Outstanding Invoices Currently Due:	\$ 800,000.00 – Latham & Watkins
	\$ 65,000.00 - Wehner & Perlman
Request for Future Reserve:	\$ 300,000.00 - Latham & Watkins
Request for Future Reserve:	\$ 150,000.00 - Wehner & Perlman

The total amount requested for this case in this resolution is thus \$1.315 million, including \$1.1 million for Latham & Watkins and \$215,000 for Wehner & Perlman.

2. *Marcus Abbe, et al. v. City of San Diego* [SDPOA #2], United States District Court Case No. 05 CV 1629

On August 16, 2005, more than 1,900 members of the San Diego Police Department filed this lawsuit, claiming they are owed more than \$100 million in compensation, including overtime pay, under the federal Fair Labor Standards Act (FLSA).

Plaintiffs have filed motions for partial summary judgment on liability issues. The City contemplates filing cross motions. Discovery is ongoing. Motions are scheduled to be heard in September. A mediation also has been scheduled. The City anticipates that defending the case through trial, if necessary, will cost an additional \$2 million in attorney fees, expert fees and costs. A tentative trial date has been set for November 2008.

In closed session on July 10, 2007, the Council was informed of the status of the case and the legal fees pending. The Council was informed of the need for additional funding and that funding could come from the Public Liability Fund.

Outstanding Invoices Currently Due: \$ 100,000.00 - Latham & Watkins

Request for Future Reserve: \$ 1,000,000.00 - Latham & Watkins

The total amount requested for this case in this resolution is thus \$1.1 million for Latham & Watkins.

3. *Erica Aaron, et al. v. Michael Aguirre, et al* [SDPOA #3], United States District Court Case No. 06 CV 1451

On July 18, 2006, numerous police officers filed and served a complaint in this case, which raises issues related to SDPOA #1. This matter is still pending in United States District Court, but could be dismissed as a result of the court's decision in SDPOA #1.

No outstanding invoices are due. This request solely involves a reserve for future work on the matter.

Request for Future Reserve: \$ 700,000.00 - Latham & Watkins

Request for Future Reserve: \$ 100,000.00- Wehner & Perlman

The total amount requested for this case in this resolution is thus \$800,000.

FISCAL CONSIDERATIONS: Authorize an additional \$3,215,000.00 to provide defense to the City of San Diego, as well as current and former City officials and staff related to the defense of SDPOA #1 USDC Case No. 05CV1581 H, SDPOA #2 USDC Case No. 05CV152 and SDPOA #3 USDC Case No. 06CV1451.

000599

With this action, the Council will authorize the Auditor and Comptroller to appropriate \$3,215,000.00 from the Public Liability Fund to meet this obligation.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Council has been informed in Closed Session of the invoices due and the requests for future reserves detailed above. Previously, the three POA matters were billed as two separate matters.

They are now combined into one matter and this is why they are included in one Executive Summary.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Not applicable

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Latham & Watkins and Wehner & Perlman



Assistant City Attorney

000601

The City of San Diego
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800021

ORIGINATING

DEPT. NO.:

45

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: _____ Fund: _____

Purpose: _____

Date: _____ By: _____

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE ☐

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$3,215,000.00

Vendor: Latham & Watkins LLP & Wehner & Perlman

Purpose: Authorization for continued retention, pmt for invoices & future reserve funding for outside legal services to represent the City of San Diego in SDPOA v. Aguirre, Marcus Abbe v. City of San Diego and Aaron v. Aguirre. Authorizes the City Auditor & Comptroller to expend monies from the Public Liability Fund for said expenditures.

Date: July 12, 2007 By: *Pam Hallbert* 7/12/07

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	81140	81140	3501	4141	81141				\$3,215,000.00
TOTAL AMOUNT										\$3,215,000.00

AC-361 (REV 2-92)

FUND OVERRIDE ☐

AC 2800021

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

BE IT RESOLVED, by the Council of the City of San Diego, that the City Attorney is authorized to continue the retention of Latham & Watkins, LLP, for an additional amount not to exceed \$2,900,000, to provide legal services in *SDPOA v. Michael Aguirre, et al*, USDC Case No. 05 CV 1581; *Marcus Abbe, et al v. City of San Diego*, USDC Case No. 05 CV 1629; and *Erica Aaron, et al v. Michael Aguirre*, USDC Case No. 06 CV 1451.

BE IT FURTHER RESOLVED, that the City Attorney is authorized to continue the retention of Wehner & Perlman for an additional amount not to exceed \$315,000, to provide legal services in *SDPOA v. Michael Aguirre, et al*, USDC Case No. 05 CV 1581; and *Erica Aaron, et al v. Michael Aguirre*, USDC Case No. 06 CV 1451.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is authorized to expend the amount not to exceed \$3,215,000 from the Public Liability Fund, solely, and exclusively for the purpose of providing funds for the above described legal services, contingent upon the City Auditor and Comptroller first furnishing one or more certificates demonstrating that the funds necessary for expenditures are, or will be, on deposit in the City Treasury.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Karen A. Heumann
Assistant City Attorney

KAH:als
07/12/07
Or.Dept:City Atty.
Aud.Cert:2800021

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor